

ORIGINAL

JOHN STAURULAKIS, INC.
TELECOMMUNICATIONS CONSULTANTS
6315 SEABROOK ROAD
SEABROOK, MARYLAND 20706

301-459-7590
FAX 301-577-5575

RECEIVED

AUG 26 1996

August 26, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706

Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of

Telephone Number Portability

)
)
)
)
)

CC Docket No. 95-116

The accompanying petition for reconsideration, prepared by John Staurulakis, Inc. (JSI), is in response to the First Report and Order and Further Notice of Proposed Rulemaking, released on July 2, 1996, in the above-referenced docket.

Any questions concerning this filing may be directed to JSI.

Sincerely,



Michael S. Fox
Director
Regulatory Affairs

Enclosures

cc: International Transcription Services, 2100 M Street, Suite 246

No. of Copies rec'd
List ABOVE

0+11

RECEIVED

AUG 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

)
)
)
)
)

CC Docket No. 95-116

PETITION FOR RECONSIDERATION

Michael S. Fox
Director, Regulatory Affairs

John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706
(301) 459-7590

Date: August 26, 1996

Table of Contents

Summary.....	ii
I. The Largest 100 Market Rule.....	2
II. The Commission Must Respect Each Rural LEC's Automatic Exemption, Absent Lawful State Termination.....	3
III. Congress Did Not Intend to Impose Costs for Unrequested Interconnection on Rural LECs.....	4
IV. The Record and the Law Require the Commission to Treat Rural LECs in Large MSAs like Other Rural LECs.....	6
V. The Largest 100 Market Rule Will Unnecessarily Burden Rural LECs and Their Customers.....	7
VI. The Premature Mandate for Number Portability in Rural LEC Areas Will Frustrate the Act's Cost Recovery Mandate.....	9
VII. Conclusion.....	10

Summary

In enacting the Telecommunications Act of 1996,¹ Congress did not intend to impose the expense and burden of implementing number portability upon rural telephone companies (a) in the absence of a bona fide specific request for interconnection and known, available technology, (b) in conflict with any rural LEC's automatic rural telephone company exemption that has not been terminated by lawful state action, or (c) where the costs would fall on local ratepayers. The decision fails to recognize the disproportionate impact the rule threatens for rural LECs and their customers. There is no benefit or point in requiring major unscheduled upgrades whenever even a few customers live in a large MSA, and if competition is not imminent. Consequently, the Commission should change its order to remove rural telephone company obligations in large markets because they conflict with the Act and the intent of Congress.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	RM 8535
)	

PETITION FOR RECONSIDERATION

John Staurulakis, Inc. (JSI) petitions the Commission for reconsideration and modification of the First Report and Order in the above-captioned proceeding.¹ JSI urges the Commission to modify its decision by eliminating its application to small and rural local exchange carriers (LECs) in the largest 100 MSAs.

JSI is a consulting firm that provides services for numerous, primarily small and rural, LECs with respect to cost of service and cost recovery issues. JSI has ascertained that at least 21 LECs in 13 states, for which JSI provides consulting services, provide local exchange and exchange access services to customers within one of the largest 100 MSAs. For customers in those large markets, the Commission has mandated long term number portability, set a compliance schedule and established not-yet-feasible standards.

JSI is participating for the first time at this stage because the Commission's implementation of the number portability provision set forth in section 251(b)(2) of the Telecommunications Act of 1996 has raised new issues and threatens imminent adverse effects on LECs served by the firm. The concerns could not have been known in the earlier stages of this proceeding. Both lawful implementation of the Act and the public interest of customers in the largest 100 MSAs areas who receive service from affected JSI clients and other similarly-

¹ Telephone Number Portability, cc Docket No. 95-116, FCC 96-286, "First Report and Order and Further Notice of Proposed Rulemaking" (released July 2, 1996) (Order).

situated rural telephone companies require prompt Commission consideration and appropriate relief for the concerns raised for these LECs by the Order.

I. The Largest 100 Market Rule²

In implementing § 251(b) of the 1996 Act, the Commission has decreed (p. 46, para. 84) that LECs "...in the 100 largest MSAs will be required to install the capability to query number portability databases by December 31, 1998," in accordance with the currently infeasible performance criteria in § 52.3(a) of the rules. The Order recognized (pp. 7, 45, paras. 9, 83) that rural telephone companies (rural LECs)³ "may be exempt" and, along with some additional mid-size companies, may also be able to obtain suspension or modification of number portability obligations from their state commissions.⁴ Nevertheless, without further inquiry about the potential effects of its action on rural LECs, the Commission left the question of "the application of this statutory exemption" and the adequacy of the safeguard for rural LECs for later decision in its massive interconnection proceeding. Accordingly, the Commission adopted its accelerated long term implementation requirement and deadline for rural and urban LECs alike in the largest 100 MSAs (see, Order, p. 45, para. 83).

² 47 C.F.R. § 52.3(b).

³ The Act defines a "rural telephone company" (rural LEC) as a local exchange carrier operating company that meets one of four tests, two based on the density of the population or nature of its study area or service territory and two based on the number of lines served, §3(r)(47). All of the JSI clients affected by the top 100 market number portability mandate fall within the statutory definition.

⁴ The Act provides that states "shall" grant petitions for suspension or modification as necessary to avoid requirements found technically infeasible, unduly burdensome or economically damaging for customers, when also in the public interest. To petition, a LEC aggregated with all its affiliated LECs must serve less than 2% of the nation's subscriber lines. § 251(f)(2).

II. The Commission Must Respect Each Rural LEC's Automatic Exemption. Absent Lawful State Termination

The 1996 Act automatically exempts all rural LECs from the interconnection requirements for "incumbent" LECs set forth in section 251(c) of the Act, unless and until the appropriate state commission, in a proceeding triggered by a bona fide request, finds that compliance with the request is technically feasible, is not unduly economically burdensome and is consistent with the universal service provisions. As a result, the LECs JSI advises, all rural LECs, are subject to the general "interconnection" duty to link their networks directly or indirectly with requesting telecommunications carriers imposed by section 251(a)(1).⁵ They also have the statutory duty to provide number portability "to the extent that it is technically feasible" under section 251(b)(2). However, unlike large and urban LECs, they are not obligated to meet the detailed requirements set forth in section 251(c)(1)-(6). The exemption excuses them from direct or equal interconnection at "any technically feasible point," unbundling and providing switching, call-related databases (such as "down-stream or signaling systems") or reselling at wholesale prices. Indeed, as the Commission acknowledges in the Order (p. 45, para. 83), exempt rural LECs are not even required to negotiate interconnection agreements pursuant to section 251(c)(1).

Consequently, Congress did not provide the Commission with unbridled authority to dictate how a rural LEC must provide number portability.⁶ The Commission may not order rural LECs to implement number portability via databases, install and make available SS7 or AIN capabilities, or install and furnish functions requiring new switching software. Not only

⁵ The recent interconnection order holds (para.176) that the general interconnection obligation imposed by subsection (a) "refers only to the physical linking of two networks for the mutual exchange of traffic." Implementation of the Local Competition Provisions in Telecommunications Act of 1996, FCC 96-325, CC Docket No. 96-98 (released Aug. 8, 1996).

⁶JSI notes that the same infirmity exists for applying long term number portability to rural LECs outside the largest 100 MSAs. However, owing to the later deadline and the need for a specific request, these rural LECs may have adequate time to obtain appropriate state rulings.

is the exemption automatic, but the authority to terminate it has been lodged solely in the state commissions. The Commission may, accordingly, require exempt rural LECs to provide number portability, as section 251(b)(2) provides, "to the extent technically feasible." It may not, as it has, order them to provide interconnection, unbundling and other elements made inapplicable by 251(f)(1), unless the state rules that the requirements meet the statutory termination standard. Moreover, the unauthorized burden here has not and cannot be shown to benefit rural customers or rural competition, as the Commission has assumed.

III. Congress Did Not Intend to Impose Costs for Unrequested Interconnection on Rural LECs

As noted, the Act requires all LECs, including incumbent and competing LECs to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. §251(b)(2). However, Congress displayed caution, in connection with both the automatic rural exemption discussed above and the all-LEC requirements of section 251(b), to spare rural telephone companies the costs and burdens of implementing interconnection requirements prematurely.

The rural LEC exemption from the detailed interconnection duties in section 251(c) remains in effect at least until the LEC receives a "bona fide request for interconnection, services or network elements." Such a request is the prerequisite for the proceeding the state commission must conduct to decide whether termination is warranted. Congress had the same concern not to impose unnecessary regulation and expense when it adopted the all-LEC requirements in section 251(b) -- including the number portability requirement. The Conference Report gives fair warning that the Act's all-LEC requirements are also not for hypothetical competitors:

The conferees note that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who

actually seeks to connect with or provide services using the LEC's network.⁷

In addition to warding off excessive regulation and avoiding unwarranted expense, the existence of a specific request indicates that there will be competitive choices to balance the cost and that there is real market demand for interconnection. In addition, less-hasty federal regulation will leave room for the states to consider requests for suspension or modification, as well as to hold the exemption inquiry initiated by such a request. Indeed, the Commission correctly pointed out (p. 45) that "[i]n addition" to the petitions for suspension or modification authorized by § 251(f)(2), "...carriers satisfying the statutory criteria contained in Section 251(f) may be exempt from the obligations to provide number portability as set forth herein." Yet it imposed an across-the-board fiat in the largest MSAs without providing a reasonable time before implementation must begin for either state statutory process to operate.

Notwithstanding this clear congressional intention to start to implement §251(b) and (c) only upon a particularized request to an individual LEC for actual use of number portability provided by that LEC, the Order requires and schedules implementation for all LECs in the nation's largest 100 MSAs by December 31, 1998. The Commission did not seek information, let alone make any finding, that small or rural LECs in the largest markets had received such bona fide requests. There is no basis for assuming when, if ever, such requests will occur in the less-inviting areas served by rural LECs. Yet the Order imposes detailed, expensive and burdensome regulations on even the rural LECs and customers Congress has singled out for particular caution.⁸ Indeed, the Commission has ruled that small and rural LECs must comply, apparently regardless of expense, even before it figures out how to recoup the costs.

⁷5. Conf. Rep. No. 230, 104th Cong., 2d. Sess. 121 (1996) (emphasis added).

⁸In this regard, it is especially inappropriate that the Commission relies on the BOC Checklist requirements in adopting a mandate that extends well beyond the BOCs. The existence of a more detailed interconnection Checklist as a condition for interexchange relief in a wholly different part of the Act indicates not that Congress intended all LECs to comply with the specified BOC conditions, but rather that it did not so intend.

Adopting the language of the conferees, then, the Order's pre-request mandate does not "make sense." The Commission should reconsider the mandate and conform its rules to the law and the intent of Congress.

IV. The Record and the Law Require the Commission to Treat Rural LECs in Large MSAs like Other Rural LECs

It might be argued that the Commission could reasonably conclude or assume that the large urban LECs have received requests to interconnect, including requests from competitors who want number portability provided for their benefit in attracting customers. However, there is no basis in logic or the record to indulge in any such presumptions for rural LECs, regardless of the geographical location of their service territory. The Commission has wisely refrained from making an unwarranted presumption that there have been requests or that whatever technology develops will be feasible with regard to the small and rural LECs outside those markets. Instead, the obligation for the rest of the nation will not take effect until January 1, 1999, and then only after a LEC outside the largest MSAs receives a bona fide request.⁹ In fact, the Order (pp. 42-43, para. 80) does not even permit number portability requests for the remaining MSA and non-MSA areas until January 1, 1999, which is, at the earliest, six months after implementation by rural LECs in the largest MSAs must be complete.

The Order does not provide any support or rational explanation for the contrary presumption that ordering number portability for rural LECs with customers in the top 100 MSAs is justifiable because of their geographical location. Nor is there any record support for the implicit assumption that technology will be available in "mid-1997" (see, Order at 41, para. 74), let alone that the technology will be feasible for rural LECs serving top 100 markets. Nor is there a factual predicate for the Commission's finding (Order, p. 43 para. 80)

⁹The rules make it clear, § 52.3(c), that the request must be "specific" and must come from "another telecommunications carrier in areas which that telecommunications carrier is operating or plans to operate."

that its "deployment schedule" is consistent with the Act's directive for regulations imposing the requirement only "to the extent technically feasible...." Indeed, the Order (p. 44, para. 81) indicates that the Commission is basically unaware of the nature or extent of the burden it is imposing on small and rural LECs in the largest MSAs: The Order declares (*ibid.*) -- again without record support -- that the burden in the largest markets "should be less than that upon carriers in smaller markets because the latter may be required to undertake hardware upgrades whereas larger carriers may already have upgraded their switches." Thus, the order mistakenly equates large size in a market with large size and large LEC switching capabilities. The Commission should limit its assessment of relative rural LEC burdens to situations for which it has developed a factual record, or at least limit its findings to the large, urban-centered carriers it has in mind. It has not even tried to ascertain rural LECs' current capabilities. Indeed, that would not be easy, since the order indicates (pp. 39, 43 paras. 71, 81) that the mandated technology is not even developed yet.

The only lawful and reasonable course is for the Commission to eliminate the more stringent largest 100 MSA obligations and implementation deadlines for rural telephone companies. The Commission should treat all rural LECs as small-market providers, at least until (a) a particular LEC has been specifically asked for number portability in connection with another provider's genuine competitive service plans for its service area, and (b) there is factual evidence that it is technologically feasible for rural LECs and that rural LECs' burden will not be disproportionate.

V. The Largest 100 Market Rule Will Unnecessarily Burden Rural LECs and Their Customers

Imposing this premature and unjustified requirement to provide long term number portability and implement technology that is yet to become available, will likely require data base development or access, network reorganization and investments by small and rural LECs.

Yet, interconnection may not be requested by a competing carrier in the foreseeable future, as Congress realized. In these circumstances, the expense is likely not to benefit any consumers. Premature implementation also puts pressure on affected rural LECs to seek waiver under § 251(f)(2), which will expose state commissions to burdensome proceedings to deal with a Commission-imposed requirement that Congress was wisely too cautious to impose.

Even the Order's recognition (p. 46, para. 85) that waivers may be appropriate cannot cure the shortcomings of the Top 100 MSA mandate for rural LECs. The contemplated short term, narrow waivers are no substitute for the Congressional plan that rural LECs would not have to incur expenses to prepare for hypothetical competitors, but only for actual or imminently planned competition -- evidenced by a specific bona fide request.

The rural LECs represented by JSI that have customers in the top 100 MSAs serve these customers from exchanges that range in size from 57 access lines to about 36,000 access lines. All are rural LECs, but the size of the company or its exchanges does not tell the whole story about the impact. Many of these LECs have only a fraction of their customers in exchanges that serve MSA counties. For example, one rural LEC in Michigan will have to make accelerated long term number portability availability to its single 592 access line exchange because 127 customers are in an Ann Arbor MSA county. Another will have to provide the capability for 11 switches, although only a fraction of the customers served from most of the switches is in a large MSA county and one switch serves an exchange with 2,319 access lines of which only 8 are in an Austin MSA county. A Georgia LEC will have to comply for its 10,236 line exchange although it serves only 250 customers in an Atlanta MSA county. Rural LECs may even have to comply for host switches that are not in any MSA because a few customers in an MSA county are served by a subtending remote switch, which can only comply if the host has the capability.

Exchanges and companies with these sizes and locations are not likely candidates for local competition any time soon. In short, the Order's attempt to create a line of demarcation

by service in an MSA plainly leads to arbitrary and inequitable results, at least when extended to the diverse and scattered service areas of rural LECs. The cost of premature implementation in both top 100 MSA and other areas where there is no competitor threatens to raise local rates for customers that do not even benefit from a choice of local carriers.

The Commission is clearly aware that the long term requirement will be a burden for any LEC. Indeed, the Order (p. 42, para. 77) staggers the implementation for the BOCs in recognition of the pressure this regulator-driven upgrade demand will place on the equipment market. It does not explore how the rural LECs swept under this rapid implementation mandate will be affected by the limited size and bargaining position they take to the switch upgrade marketplace, compared to the huge urban LECs for which the rule was apparently fashioned. Instead, the Order (p. 44, para. 82) simply asserts that its action is “in the public interest and supported by the record.”

The Order again evidences the Commission’s inattention to rural LECs with any MSA subscribers, speculating recklessly that the requirement will speed implementation where competition is imminent, but trust slower market implementation “to the actual pace of competitive entry into local markets.” In fact, Congress relied on the bona fide request approach to leave the timing of number portability to the working of the competitive marketplace, and intended not to impose requirements until the technology became feasible.

VI. The Premature Mandate for Number Portability in Rural LEC Areas Will Frustrate the Act’s Cost Recovery Mandate

The Order acknowledges the requirement in the 1996 Act that the “cost of establishing ...number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹⁰ JSI realizes that the Commission is conducting further proceedings to decide long term cost recovery issues in this docket.

¹⁰ § 251 (e)(2).

However, the Commission does not take into account the dilemma of a rural LEC located in a top 100 MSA (or serving even a handful of customers in such an area) that is forced to implement number portability even if no other carrier ever requests or uses it. As things stand now, the expense of upgrading its network and providing the necessary data base will fall solely upon the incumbent LEC and its existing customers. The Commission has not fashioned a universal service fund or other mechanism or arrangement to spread the cost over other providers. Its proposals do not portend well for sparing the customers of LECs in large MSAs from footing the bill for at least the cost of any SS7 or AIN investment required to comply. The Commission seems to think that number portability is not the only cause of these expenses, even if the need for the changes arises from the deadline in the Order. Expenses, such a LEC must recover itself, will fall on customers that do not use number portability to switch to a different LEC.

To meet the large MSA implementation deadline, rural LECs will need to start now. Cost incurred now can only be recovered from the subject rural LEC's rural customers. Again, these are the customers that typically cannot use number portability because there is no competitor. Retroactive recovery measures would be of dubious legality, at best. Thus, it is unwise and unfair to mandate expedited rural LEC implementation of long term number portability in large MSAs before settling long term cost recovery issues. Hence, the legal requirement for a process that will spread the cost of number portability beyond the rural LEC's customers provides yet another good reason for the Commission to exclude rural LECs from its early implementation rules for the largest MSAs.

VII. Conclusion

The Commission has imposed a heavy burden on rural LECs in the largest 100 MSAs by prescribing accelerated long term number portability, with all it may entail in switch or software upgrades, SS7 or even AIN deployment and novel databases. It has done so

unlawfully because (a) its mandate requires forms of interconnection for which rural LECs have both an exemption (unless the state withdraws it) and the right to seek suspension or modification from the state; (b) it has not followed Congress's intention not to force interconnection implementation without a bona fide request; (c) it has arbitrarily treated large MSA rural LECs differently from the remaining rural LECs whose obligations will start later and only after a bona fide request; (d) it has required investment and expenses that may fall disproportionately on these LECs and their customers; and (e) it has failed to ensure timely compliance with the Act's requirement to spread number portability costs over all telecommunications carriers. To heed the Act and the intent of Congress, the Commission should reconsider its rules and repeal the requirement for long term number portability for rural LECs in the largest 100 MSAs.

Respectfully submitted,

John Staurulakis, Inc.

By:



Michael S. Fox
Director, Regulatory Affairs

John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706
(301) 459-7590

Date: August 26, 1996